



Advisory Opinion 08-030

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). It is based on the facts and information available to the Commissioner as described below

Facts and Procedural History:

On August 22, 2008, the Information Policy Analysis Division (IPAD) received a letter dated August 19, 2008, from Mark Anfinson, an attorney representing the *Chaska Herald*. In his letter, Mr. Anfinson asked the Commissioner to issue an advisory opinion regarding the newspaper's right to gain access to certain data from the Carver County Sheriff's Office.

IPAD, on behalf of the Commissioner, wrote to Byron Olson, Carver County Sheriff, in response to Mr. Anfinson's request. The purposes of this letter, dated August 29, 2008, were to inform him of Mr. Anfinson's request and to ask him to provide information or support for his position. On September 18, 2008, IPAD received a response, dated same, from Thomas Haines, Assistant Carver County Attorney.

A summary of the facts as Mr. Anfinson provided them is as follows. Mr. Anfinson wrote in his opinion request:

Recently, a 16-year-old Carver County resident was detained by the Carver County Sheriff's office after allegedly committing a serious assault, for which he was charged. The assault charge alone would constitute a felony-level offense, but the victim subsequently died, and as we understand it, more serious charges are therefore pending. The newspaper has asked for a copy of the booking photograph (mug shot) of the juvenile that was obtained when the juvenile was taken into custody, citing Minn. Stat. §13.82, subd. 26.

However, the county attorney takes the position that the photograph is not publicly accessible....The Carver County attorney's office has cited language found in §260.171, subd. 5(c), which authorizes law enforcement agencies to obtain booking photographs of juveniles, and then restricts the ways in which the photographs may be "used."

We disagree with this interpretation...

Issue:

Based on Mr. Anfinson's opinion request, the Commissioner agreed to address the following issue:

Did the Carver County Sheriff's Office comply with Minnesota Statutes, Chapter 13, in denying a request for a copy of a booking photograph of a 16 year-old?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.)

Data that law enforcement agencies collect, create, and maintain are classified pursuant to Minnesota Statutes, section 13.82. Pursuant to section 13.82, subdivision 26, booking photographs are public.

While section 13.82 applies to most law enforcement data, peace officer records about children who are or may be delinquent, or who may be engaged in criminal acts are classified pursuant to Minnesota Statutes, section 260B.171, subdivision 5. Generally, section 260B.171, subdivision 5(a), classifies those data as private. However, records relating to an offense where proceedings are open to the public under section 260B.163, subdivision 1, are, based on the general presumption, classified pursuant to section 13.82.

The Commissioner has few details about the facts of this particular situation. She knows only what Mr. Anfinson wrote in his opinion request - that the Carver County Sheriff's office detained a 16-year-old who allegedly committed a serious assault. Mr. Anfinson stated, "The assault charge alone would constitute a felony-level offense, but the victim subsequently died, and, as we understand it, more serious charges are therefore pending."

Based on the relevant statutory sections cited above, the Commissioner's conclusion is as follows. The data subject is a minor child. Because s/he may be delinquent or may be engaged in criminal acts, the data about him/her are classified pursuant to section 260B.171. However, the next part of the analysis is dependent upon facts the Commissioner does not have. Pursuant to section 260B.171, subdivision 5(a), if the proceedings in this situation are open to the public and the photograph is part of that record, those data are not classified pursuant to section 260B.171, subdivision 5, but, pursuant to the general presumption, are classified pursuant to section 13.82. Section 13.82, subdivision 26, provides that booking photographs are public.

If the proceedings in this situation are not open to the public, the photograph is classified pursuant to section 260B.171, subdivision 5, and is private.

In his comments to the Commissioner, Mr. Haines cited language in section 260B.171, subdivision 5(c), which relates to photographs taken of a child who has been taken into immediate custody in accordance with the laws relating to arrests:

A photograph may be taken of a child taken into custody...provided that the photograph must be destroyed when the child reaches the age of 19 years....Photographs of juveniles authorized by this paragraph may be used only for institution management purposes, case supervision by parole agents, and to assist law enforcement agencies to apprehend juvenile offenders. The commissioner shall maintain photographs of juveniles in the same manner as juvenile court records and names under this section.

This clause does not change the private classification of a photograph but does clarify that photographs of minor children who are taken into immediate custody may be used only for the purposes specified.

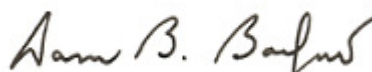
Opinion:

Based on the facts and information provided, my opinion on the issue that Mr. Anfinson raised is as follows:

If the proceedings in this situation are not open to the public, the booking photograph is private data pursuant to Minnesota Statutes, section 260B.171, subdivision 5, and the Carver County Sheriff's office appropriately withheld the photograph.

If the proceedings in this situation are open to the public and the booking photograph is part of the record, the photograph is public pursuant to Minnesota Statutes, section 13.82, subdivision 26.

Signed:



Dana B. Badgerow
Commissioner

Dated:

October 8, 2008